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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 Tetravue, Inc., and Paul Banks

12 Plaintiffs,

13 v.

14 St. Paul Fire & Marine Insurance
15 Company, a DOES 1 through 20,
16 inclusive,

17 Defendant.
18

Case No.: 14-CV-2021 W (BLM)

**ORDER STAYING CASE PENDING
THE OUTCOME OF PARALLEL
STATE-COURT PROCEEDINGS**

19 Pending before the Court are the parties' supplemental briefs on whether this Court
20 should dismiss or stay this matter under the *Younger* or *Colorado River* doctrine. The Court
21 decides the matter on the papers submitted and without oral argument. See Civ.L.R. 7.1
22 (d.1). For the reasons stated below, the Court will **STAY** this matter under the *Colorado*
23 *River* doctrine pending the outcome of the parallel state-court proceedings.

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1 **I. BACKGROUND**

2 This removed insurance-coverage action represents Plaintiffs Tetravue, Inc., and Paul
3 Banks' (collectively "Tetravue") second lawsuit seeking to enforce St. Paul's defense
4 obligations for an earlier state-court action. In Tetravue's first lawsuit seeking declaratory
5 relief against St. Paul, the California Court of Appeal reversed the Superior Court's order
6 granting St. Paul's summary-judgment motion, and held that St. Paul had a duty to defend
7 Tetravue in the underlying lawsuit. After the Court of Appeal remanded the case, the trial
8 court denied Tetravue's motion to amend the complaint to add a claim for damages, and
9 causes of action for breach of contract and breach of the implied covenant of good faith
10 and fair dealing. Tetravue appealed the trial court's ruling on the motion to amend, which
11 is currently pending.

12 Meanwhile, in order to avoid a statute of limitations problem, Tetravue filed a
13 second state-court lawsuit against St. Paul for money damages. On August 28, 2014, St.
14 Paul removed the case to this Court. Tetravue then filed a motion to remand on the basis
15 that St. Paul failed to satisfy the amount-in-controversy requirement for diversity
16 jurisdiction. This Court denied Tetravue's motion, but ordered the parties to submit
17 additional briefing on the issue of *Younger* abstention. (See April 8, 2015 Order [Doc. 16].)
18 In their supplemental brief, Tetravue argues for a remand or stay under either the *Younger*
19 or *Colorado River* doctrine. St. Paul opposes.
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22 **II. DISCUSSION**

23 **A. Younger Abstention**

24 Tetravue argues that the *Younger* abstention doctrine requires remand. *Younger*
25 abstention is an exception to the general rule that a federal court must adjudicate
26 controversies properly before it. Logan v. U.S. Bank Nat. Ass'n., 722 F.3d 1163, 1166–67
27 (9th Cir. 2013) (internal citations omitted). The doctrine reflects a "strong federal policy
28 against federal–court interference with pending state judicial proceedings." Middlesex

1 County Ethics Comm. v. Garden State Bar Ass’n, 457 U.S. 423, 431 (1982). It requires a
 2 federal court to abstain from exercising jurisdiction over a civil case where:

3 (1) a state-initiated proceeding is ongoing; (2) the proceeding implicates
 4 important state interests; (3) the federal plaintiff is not barred from litigating
 5 federal constitutional issues in the state proceeding; and (4) the federal court
 action would enjoin the proceeding or have the practical effect of doing so....

6 San Jose Silicon Valley Chamber of Commerce Political Action Comm. v. City of San Jose,
 7 546 F.3d 1087, 1092 (9th Cir. 2008).

8 St. Paul contends that the present case fails to satisfy the second and fourth elements
 9 necessary to invoke *Younger* abstention. For the following reasons, the Court agrees.

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 11 **1. This case does not implicate an important state interest.**

12 *Younger* abstention is inappropriate where the case before the federal court does not
 13 implicate an important state interest. San Jose Silicon Valley Chamber of Commerce
 14 Political Action Comm., 546 F.3d at 1092. Tetravue contends that this case implicates an
 15 important state interest for two reasons. First, it argues that an important interest exists
 16 because this dispute concerns an insurance contract and “federal law reserves insurance law
 17 and regulation to the states.” (*Pls.’ Mot.* [Doc. 17] 7:5–8.) Logan v. U.S. Bank Nat. Ass’n,
 722 F.3d 1163, is relevant in evaluating this argument.

18 In Logan, plaintiff sought *Younger* abstention on the basis that an unlawful-detainer
 19 action implicates important state interests. In evaluating the argument, the Ninth Circuit
 20 explained that there are three types of civil proceedings in which the state might have a
 21 vital interest:

22 noncriminal proceedings that “bear a close relationship to proceedings
 23 criminal in nature,” “proceedings necessary for the vindication of important
 24 state policies,” and “proceedings necessary for the functioning of the state
 25 judicial system.” [Citation omitted.] The first two categories implicate the
 26 state’s executive interest and encompass cases in which the state or an agent of
 27 the state is a party “in an enforcement posture.” [Citation omitted.] The
 28 third category encompasses cases—including those between private parties—
 where the operation of the state judicial system is itself at issue.

1 Id. at 1167–68. Because the unlawful-detainer action did not fall into any of the three
2 categories, the court found abstention was not appropriate.

3 Similarly, this insurance coverage dispute does not fall into any of the three
4 categories identified in Logan. Since neither the state nor its agent is a party, the second
5 *Younger* element would only be met if the operation of the state judicial system was itself at
6 issue. But Tetravue fails to explain how the operation of the state’s judicial system is
7 implicated by the fact that state insurance law governs this case. See Logan, 722 F.3d at
8 1167 (stating that an important state interest for purposes of *Younger* is not present “simply
9 because a suit implicates a state law, even one involving a traditional state concern”).
10 Accordingly, Tetravue’s argument based on the state’s interest in insurance law and
11 regulation is unavailing.

12 Tetravue next seeks to satisfy the second element by arguing that California has an
13 important interest in “enforcing the orders and judgments of [its] courts.” Specifically,
14 relying on Pennzoil Co. v. Texaco Inc., 481 U.S. 1 (1987), Tetravue contends the State has
15 an important interest in determining the procedure by which a party can enforce a
16 declaratory judgment and in determining the preclusive effect of such a judgment. (*Pls.’*
17 *Reply* [Doc. 20] 4:3–6:6).

18 Pennzoil established that a state has an important interest in “enforcing the orders
19 and judgments of [its] courts.” Id. at 13. However, the Court did not hold that this
20 interest is implicated merely because a case presents the state with an opportunity to
21 further develop its common law regarding the proper manner of enforcement or the
22 preclusive effect of a specific type of judgment. Rather, Pennzoil simply concluded that
23 this interest is implicated where a federal court obstructs the state court’s ability to enforce
24 its orders and judgments. Id. at 13–14. In this vein, the present case is meaningfully
25 distinguishable from Pennzoil. Unlike the federal injunction against the enforcement of a
26 state-court judgment at issue in Pennzoil, a determination by this Court regarding the
27 proper amount of damages to award for St. Paul’s breach of its duty to defend would not
28 obstruct the state court’s judgment that St. Paul, in fact, had a duty to defend.

1 Because Tetravue has failed to articulate how this case presents any interest that puts
 2 the operation of the judicial system at issue, the Court finds this case does not implicate
 3 any important state interest.

4
 5 2. Any action by this Court would not actually or effectively enjoin the
 6 state-court proceeding.

7 *Younger* is not applicable unless the federal court's action would actually or effectively
 8 enjoin a state-court proceeding. San Jose Silicon Valley Chamber of Commerce Political
 9 Action Comm., 546 F.3d at 1092. The possibility of conflicting judgments or of one
 10 court's judgment operating as *res judicata* upon the collateral proceeding is, without more,
 11 insufficient to satisfy this *Younger* element. AmerisourceBergen Corp. v. Roden, 495 F.3d
 12 1143, 1151–52 (9th Cir. 2007).

13 Tetravue argues that this element is satisfied because, if the Court of Appeal reverses
 14 the Superior Court's denial of Tetravue's motion to amend its complaint, this Court and
 15 the Superior Court would confront the same exact issues. Both courts would be deciding
 16 whether Tetravue is entitled to damages stemming from St. Paul's failure to defend against
 17 General Atomics' cross complaint and, if so, the proper amount of damages to award. If
 18 this Court were to reach a decision on these issues first, the principles of *res judicata* would
 19 likely operate as a constraint on the Superior Court's ability to decide them. However, *res*
 20 *judicata* appears to be the extent to which any action in this case could interfere with the
 21 state-court proceeding. The two proceedings would otherwise be free to progress
 22 simultaneously. Because the possibility that one court's judgment could operate as *res*
 23 *judicata* upon the other proceeding is, without more, insufficient, the Court finds this
 24 argument unpersuasive.

25 B. Colorado River abstention

26 Tetravue also argues that the Court should remand or stay under the *Colorado River*
 27 doctrine. Unlike traditional abstention doctrines, which are primarily based on principles
 28 of federalism and considerations of proper constitutional adjudication, *Colorado River*

1 “rest[s] on considerations of (w)ise judicial administration, giving regard to conservation of
 2 judicial resources and comprehensive disposition of litigation.” Colorado River Water
 3 Conservation Dist. v. U.S., 424 U.S. 800, 817 (1976) (internal citations and quotation
 4 marks omitted). Thus, the *Colorado River* doctrine can justify a stay or dismissal in
 5 situations of contemporaneous exercise of concurrent jurisdiction by state and federal
 6 courts even though traditional abstention principles do not apply. Smith v. Central Ariz.
 7 Water Conservation Dist., 418 F.3d 1032–33 (9th Cir. 2005). However, “the [Supreme]
 8 Court has carefully limited *Colorado River*, emphasizing that courts may refrain from
 9 deciding an action for damages only in ‘exceptional’ cases, and only the ‘clearest of
 10 justifications’ support dismissal.” R.R. St. & Co. Inc. v. Transp. Ins. Co., 656 F.3d 966,
 11 978 (9th Cir. 2011) (quoting Colorado River Water Conservation Dist., 424 U.S. at 805).

12 To determine whether a stay or dismissal under *Colorado River* is appropriate, “the
 13 district court must carefully consider ‘both the obligation to exercise jurisdiction and the
 14 combination of factors counseling against that exercise.’” R.R. St. & Co. Inc., 656 F.3d at
 15 978 (quoting Colorado River Water Conservation Dist., 424 U.S. at 818). The factors
 most commonly considered in the Ninth Circuit are:

- (1) which court first assumed jurisdiction over any property at stake; (2) the
- inconvenience of the federal forum; (3) the desire to avoid piecemeal
- litigation; (4) the order in which the forums obtained jurisdiction; (5) whether
- federal law or state law provides the rule of decision on the merits; (6)
- whether the state court proceedings can adequately protect the rights of the
- federal litigants; (7) the desire to avoid forum shopping; and (8) whether the
- state court proceedings will resolve all issues before the federal court.

16 R.R. St. & Co. Inc., 656 F.3d at 978–79 (citing Holder v. Holder, 303 F.3d 854, 870 (9th
 17 Cir. 2002)). “These factors are to be applied in a pragmatic and flexible way, as part of a
 18 balancing process rather than as a mechanical checklist.” American Intern. Underwriters
 19 (Philippines), Inc. v. Cont’l Ins. Co., 843 F.2d 1253, 1257 (9th Cir. 1988). This balancing
 20 process is “heavily weighted in favor of the exercise of jurisdiction.” Moses H. Cone
 21 Memorial Hosp. v. Mercury Const. Corp., 460 U.S. 1, 16 (1983). Thus, “[a]ny doubt as to
 22 whether a factor exists should be resolved against a stay, not in favor of one.” Travelers
 23 Indem. Co. v. Madonna, 914 F.2d 1364, 1369 (9th Cir. 1990).

Both parties agree that the first two factors are neutral because “the dispute does not involve a specific piece of property, and both the federal and state forums are located in [the same city].” R.R. St. & Co. Inc., 656 F.3d at 979. However, disagreement exists on the remaining factors.

1. Piecemeal Litigation

The paramount consideration in Colorado River was “the danger of piecemeal litigation.” Moses H. Cone, 460 U.S. at 19. “Piecemeal litigation occurs when different tribunals consider the same issue, thereby duplicating efforts and possibly reaching different results.” American Intern. Underwriters (Philippines), Inc., 843 F.2d at 1258. St. Paul argues that there is no risk of piecemeal litigation here because the state-court proceeding is currently stayed pending appeal and, if the Court of Appeal affirms, then the state court will not consider any of the issues presented to this Court. (*Def’s Opp’n* [Doc. 19] 9:21–26.)

This argument ignores the very real possibility that the Court of Appeal may reverse the Superior Court’s denial of Tetravue’s motion to amend.¹ If that happens, both this Court and the state court would expend scarce judicial resources confronting the same exact issues. Both would be deciding whether Tetravue is entitled to damages stemming from St. Paul’s failure to defend against General Atomics’ cross complaint and, if so, the proper amount of damages to award. Accordingly, the Court finds this factor weighs in favor of a stay.

2. Order of Jurisdiction

The fourth *Colorado River* factor considers (1) which court obtained jurisdiction first in time and (2) which court has made the most progress on the issues presented. Moses H. Cone, 460 U.S. at 21. Both considerations favor Tetravue.

This Court did not obtain jurisdiction until St. Paul removed the case on August 28, 2014. In contrast, the state court obtained jurisdiction over the issues in this case several

¹ See section II.B.6 below for an analysis of whether the Court of Appeal will grant Tetravue’s appeal.

1 years earlier when Tetravue filed the declaratory action in February 2011. The state court
 2 has also made substantially more progress. This action is one for damages stemming from
 3 St. Paul's breach of its duty to defend Tetravue in the underlying litigation. It is true, as St.
 4 Paul argues, that the state court does not appear to have made much if any progress on the
 5 specific issue of damages. But neither has this Court. Indeed, the only progress this court
 6 has made is a determination that the prerequisites for diversity jurisdiction exist. (See *April*
 7 *17, 2015 Order* [Doc. 16].) By contrast, the state court has already made a careful
 8 examination of the contractual relationship between the parties and concluded that St.
 9 Paul had a duty to defend Tetravue against General Atomics' cross complaint.
 10 Additionally, the state court has considered this issue at both the Superior Court level and
 11 at the Court of Appeal. Thus, though neither court has yet addressed the specific issue of
 12 damages, the state court has already fully litigated the foundational issue of whether a duty
 13 to defend existed. Because the issue of whether a duty existed is inextricably intertwined
 14 with the issue of Tetravue's damages for St. Paul's breach, the Court finds that this factor
 15 weighs in favor of a stay.

16 3. Source of Law

17 This action is for breach of contract and bad faith. There appears to be no dispute
 18 between the parties that such actions turn entirely on state law. However, "the presence of
 19 state-law issues may weigh in favor of [not exercising jurisdiction]' only 'in some rare
 20 circumstances.'" Madonna, 914 F.2d at 1370 (quoting Moses H. Cone, 460 U.S. at 26.)
 21 Furthermore, "routine issues of state law—misrepresentation, breach of fiduciary duty, and
 22 breach of contract" do not present such "rare circumstances." Id. Because Tetravue's
 23 breach of contract and bad faith actions appear to fall squarely under the category of
 24 "routine issues of state law" as defined by Madonna, the Court finds this factor to be
 25 neutral.

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1 4. Adequacy of the State Court to Protect the Rights of the Federal
 2 Litigants

3 In the Ninth Circuit, this factor does not seem to operate “against the exercise of
 4 federal jurisdiction, only in favor of it.” Madonna, 914 F.2d at 1370. Thus, the fact that
 5 there are no federal issues presented by this litigation and the state court appears fully
 6 capable of protecting the rights of the federal litigants is unhelpful. Accordingly, the Court
 7 finds this factor to be neutral.

8 5. Forum Shopping

9 Forum shopping refers to “[t]he practice of choosing the most favorable jurisdiction
 10 or court in which a claim might be heard.” R.R. St. & Co., 656 F.3d at 981 (quoting
 11 Black's Law Dictionary 726 (9th ed. 2009)). “To avoid forum shopping, courts may
 12 consider ‘the vexatious or reactive nature of either the federal or the state litigation.’” Id.
 13 (quoting Moses H. Cone, 460 U.S. at 17 n.20.) Additionally, the Ninth Circuit has
 14 “affirmed a *Colorado River* stay or dismissal when it was readily apparent that the federal
 15 plaintiff was engaged in forum shopping.” Id.

16 Each party argues that the other is engaged in forum shopping. St. Paul seems to
 17 argue that Tetravue is forum shopping simply because it was content to litigate the case in
 18 state court and now opposes removal. (*Def.’s Opp’n* 11:9–21.) Tetravue argues that St. Paul
 19 is forum shopping because St. Paul did not seek removal until suffering an adverse ruling
 20 in state court on the issue of whether it had a duty to defend against General Atomics’
 21 cross complaint. (*Pls.’ Mot.* 12:1–7.)

22 St. Paul’s argument that Tetravue’s motion to remand demonstrates “reactive”
 23 conduct ignores the fact that the lawsuit was initially filed in state court, where the original
 24 action is pending. Additionally, as Tetravue points out, the lawsuit was filed there because
 25 the first “state case has progressed through the state court for over four years, and is
 26 governed by state law.” (*Pls.’ Reply*, 9:8–11.) Accordingly, Tetravue’s filing of this lawsuit in
 27 state court does not demonstrate forum shopping. Nor does the Court find any merit to
 28 St. Paul’s contention that Tetravue’s exercise of its appellate rights suggests forum

1 shopping. This is especially true given Tetravue's appeal of the trial court's initial ruling,
2 which demonstrates its consistent desire to exercise those rights.

3 As for St. Paul, it fails to explain its inconsistency in allowing Tetravue's declaratory-
4 relief lawsuit to proceed in state court, but now seeking to pursue the damages lawsuit in
5 federal court. The most reasonable explanation seems to be that after suffering an adverse
6 ruling by the state court on the issue of whether it had a duty to defend, St. Paul revisited
7 its thinking on which venue would be most favorable to its case. Such reactive posturing
8 constitutes textbook forum shopping.

9 For the above reasons, the Court finds this factor weighs heavily in favor of a stay.

10 **6. Likelihood that the State-Court Proceeding will Resolve all Issues**

11 A stay or dismissal under *Colorado River* is inappropriate where there exists
12 substantial doubt as to whether the state proceedings will resolve the issues presented to
13 the federal court. R.R. St. & Co., 656 F.3d at 982. There is no dispute that this case and
14 the state-court proceeding currently on appeal involve the exact same parties and issues.
15 Thus, if the Court of Appeal reverses the Superior Court's denial of Tetravue's motion for
16 leave to amend its complaint, then the state-court case will involve the identical issues and
17 parties present in this case. In that event, the state-court proceeding would resolve all
18 issues between the parties in this case.

19 However, St. Paul argues that the Court of Appeal will "almost certainly affirm."
20 Specifically, St. Paul quotes Hampton v. Superior Court, 38 Cal. 2d 652, 656 (1952), and
21 argues that the Superior Court had no choice but to deny leave to amend because a trial
22 court cannot "reopen the case on the facts, allow the filing of amended or supplemental
23 pleadings, nor retry the case" where "an appellate court reverses the judgment below and
24 directs the entry of judgment in favor of appellant." (*Def.'s Opp'n* 11:22-12:10). This
25 argument appears to rest on a misreading of Hampton.

26 It is true that, under Hampton, the Superior Court was bound to enter judgment
27 exactly as directed by the Court of Appeal and could not allow any party to seek to amend
28 or supplement the complaint in a manner inconsistent with the directed judgment.

1 However, Hampton does not appear to prohibit the Superior Court from allowing
2 Tetravue to amend its complaint in a manner that is consistent with the judgment directed
3 by the Court of Appeals. Permitting Tetravue to add a claim for damages stemming from
4 St. Paul's breach of its duty to defend against General Atomics' cross complaint is entirely
5 consistent with the entry of a judgment that this duty to defend existed. Therefore, it is
6 unclear whether Hampton required the Superior Court to deny Tetravue's motion to
7 amend.

8 Furthermore, the only reason offered by the Superior Court for denying Tetravue's
9 motion to amend was the conclusion that the "[Superior] Court lacks the authority to
10 expand the scope of this litigation when the Court of Appeal has specifically directed that
11 judgment be entered." (*Def.'s Opp'n Exhibit 1.*) Because this conclusion appears based on
12 its reading of Hampton, it seems possible that the Court of Appeal could reverse the denial
13 of Tetravue's motion to amend. Accordingly, the Court finds the state-court proceeding
14 may resolve all issues presented by this case.

15 7. Balance of Factors

16 On balance, the Court finds that this is the type of "exceptional case" that presents
17 the "clearest of justifications" necessary to warrant a stay under *Colorado River*. To begin,
18 "[n]one of the factors that would preclude a *Colorado River* stay or dismissal—issues of
19 federal law, inadequacy of the state court forum, or a possibility that the state court
20 proceeding will not resolve the dispute—are concerns in this case." R.R. St. & Co., 656
21 F.3d at 983. In contrast, the state court has already made considerable progress in this
22 litigation and if the Court of Appeal reverses the Superior Court, the state case will resolve
23 all issues presented. Thus, if the case is not stayed, there exists a significant possibility that
24 one court will waste scarce judicial resources considering the same exact issues as the other
25 court. Further, the only potential beneficiary of this duplicative effort would be St. Paul,
26 who, after receiving an adverse ruling from the state court, seems to have reassessed its
27 thinking on which venue would be most favorable to its case. For purposes of *Colorado*
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1 *River*, the importance of efficiently allocating judicial resources trumps St. Paul's desire to
2 secure what it may perceive as a potentially more favorable forum.

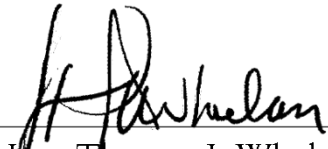
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4 **III. CONCLUSION**

5 For the reasons stated above, the Court **STAYS** this case pending resolution of
6 Tetravue's state-court appeal and **ORDERS** as follows:

- 7 • Tetravue shall provide a status report within 90 days regarding the appeal or
8 shall notify the Court within 5 days of the resolution of the appeal, whichever
9 occurs first.

10 **IT IS SO ORDERED.**

11 Dated: November 3, 2015

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13 Hon. Thomas J. Whelan
14 United States District Judge
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